

<b>FILED ELECTRONICALLY 10/1/09</b>		
<b>REQUEST UNDER 37 C.F.R. §1.705(d) FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT</b>	Attorney Docket No.	ADCI-011
	First Named Inventor	Charles R. Saikley
	Application Number	10/701,993
	Patent Number	7,572,237
	Filing Date	November 4, 2003
	Group Art Unit	3736
	Examiner Name	Jeffrey Hoekstra
	Title:	AUTOMATIC BIOLOGICAL ANALYTE TESTING METER WITH INTEGRATED LANSING DEVICE AND METHODS OF USE
Address to: Petitions Commissioner for Patents PO Box 1450 Alexandria, VA 22313		

Sir:

Under 37 C.F.R. §1.705(d), Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the above-captioned patent, which issued on August 11, 2009. This request is timely filed within 2 months from the date of issue.

Provided herewith is: (1) the fee of \$200.00 as set forth in 37 C.F.R. §1.18(e); and (2) a statement of the facts involved.

The USPTO determined that the patent was entitled to 455 days of PTA (see attached USPTO PTA calculation). Applicants believe that this PTA determination was made in accordance with the USPTO's interpretation of the "Explanation of 37 CFR §1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)" published at 69 Fed. Reg. 34238 (June 21, 2004). Under that interpretation of the PTA statute, any USPTO delay under 35 U.S.C. §154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. §154(b)(1)(B), and so as a practical effect, PTA may be awarded under 35 U.S.C. §154(b)(1)(A) or 35 U.S.C. §154(b)(1)(B), but never both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision holding that the USPTO's interpretation of the PTA statute was incorrect [see *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008); hereinafter "Wyeth"]. The court

determined that the PTA statute should properly be interpreted so that “the only way that periods of time can overlap is if they occur on the same day.” Wyeth, slip op. at 8. Thus, Wyeth holds that a USPTO delay under 35 U.S.C. §154(b)(1)(A) overlaps with a delay under 35 U.S.C. §154(b)(1)(B) only if the delays “occur on the same day.” *Id.*

Under Wyeth, Applicants submit that the USPTO delay under 35 U.S.C. §154(b)(1)(A) for the above-referenced patent (from January 4, 2005 to April 4, 2006; 455 days) does not overlap with USPTO delay under 35 U.S.C. §154(b)(1)(B) [from November 4, 2006 (3 year date) to June 21, 2007 (date of RCE filing); 229 days]. As such, the total USPTO delay for this patent totals 684 days.

The total delay for circumstances constituting a failure by the Applicant to engage in reasonable efforts to conclude processing or examination as set forth in 37 C.F.R. §1.704 is 126 days, as indicated on the enclosed PTA calculation from the USPTO.

In view of the above, Applicants submit that this patent is entitled to 558 days of PTA under 37 C.F.R. §1.703(f).

The subject patent is not subject to a terminal disclaimer.

Applicants are aware that this district court decision has been appealed to the U.S. Court of Appeals for the Federal Circuit (CAFC) but that no decision has yet been issued. Applicants, therefore, request that a decision on this request be delayed until the CAFC decides this appeal.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-0815, order number ADCI-011

Respectfully submitted,

BOZICEVIC, FIELD & FRANCIS LLP

Date: October 1, 2009

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